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## FEDERAL BUDGET FOLLOW-UP – EFFECTIVE DATE FOR PERSONAL TAX BRACKET AND CREDIT INCREASES

By: *Theo Anne Opie, LL.B.* © CCH Canadian Limited.

The 2009 federal Budget of January 27, 2009, presented by Finance Minister James M. Flaherty increased the two lowest personal income tax brackets by 7.5 per cent above their 2008 levels and increased the following personal tax credits: the basic personal amount, the spousal and common-law partner amount, the eligible dependant amount and the age amount.

The Budget indicated that taxpayers would begin to benefit from the proposed personal income tax reductions as soon as the Canada Revenue Agency revised its tax withholding tables, in spring 2009.

The Canada Revenue Agency has announced that the Budget changes will be effective April 1, 2009 and will revise the Payroll Deductions Online Calculator, payroll formulas, payroll tables, and other products to reflect the changes to personal amounts and federal tax brackets for 2009. The guides, formulas and tables will be adjusted so that the amount of the reduction in tax withheld over the remaining nine months of 2009 will be the same as if these measures had been in place for the entire year.

### Yukon Territory

The Yukon's legislation requires that it be harmonized with federal rates and therefore, while the Yukon tax rates will remain the same, effective April 1, 2009, the personal tax brackets and credits noted below will also be changed for the Yukon.

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## Personal Tax Rates

As a result of the April 1, 2009 effective date, the personal tax rates set out in the 2009 Budget document will be increased by one quarter to cover the first three months of 2009 that will have passed before the change became effective. Therefore as of April 1, 2009, the personal tax rates will be as follows:

- the upper limit of the first personal income tax bracket (15 per cent income tax rate) will increase to \$41,200 in 2009 (pre-Budget level was \$38,832); and
- the upper limit of the second personal income tax bracket (22 per cent income tax rate) will increase to \$82,399 in 2009 (pre-Budget level was \$77,664).

## Personal Tax Credits

As a result of the April 1, 2009 effective date, the personal tax credits set out in the 2009 Budget document will be increased by one quarter to cover the first three months of 2009 that will have passed before the change became effective. Therefore as of April 1, 2009, the personal tax credits will be as follows:

- the basic personal amount, the spousal and common-law partner amount, and the eligible dependant amount will increase for 2009 to \$10,375 (pre-Budget 2009 level was \$10,100); and
- the amount on which the Age Credit is based will be increased to \$6,658 (pre-Budget 2009 level was \$5,408). As well, for 2009, the net income level at which the Age Credit begins to be phased out will remain unchanged at \$32,312. The phase-out rate is 15 per cent. With this enhancement of the Age Credit amount, the income level at which the Age Credit is fully phased out will increase by over \$6,600 to \$75,032 from \$68,365.

## Revised Forms and Guides

To date, the Canada Revenue Agency has issued the revised T4127 – Payroll Deduction Formulas for Computer Programs, 88th Edition effective April 1, 2009. The new April Payroll Deduction Formulas for Computer Programs contains all the federal and Yukon changes and is located in the Forms section of PAYSOURCE at ¶160,557. When the revised federal and Yukon TD1's are issued they will be included in the Forms section.

A general re-filing of the 2009 federal or Yukon TD1 is not necessary, but a new employee, a new pensioner or an individual who wishes to change his or her federal or Yukon claim amounts will have to complete the April 2009 federal or Yukon TD1.

## Hot News Items

### 2009 Budget Season

Budget season is upon us once again. To date, the federal government, British Columbia and the Northwest Territories have issued their 2009 Budgets. Highlights of the Budgets relating to payroll are reproduced below. As the other provinces/territories issue their Budgets, they will be added to the list.

### Federal

The 2009 federal Budget of January 27, 2009, presented by Finance Minister James M. Flaherty contained measures relating to payroll.

A Budget summary was posted to CCH's PAYSOURCE News Tracker on January 27, 2009.

As well, the Budget summary is reproduced in the "Budgets & New Developments" section at ¶180,166.

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## British Columbia

The 2009 British Columbia Budget of February 10, 2009, presented by Finance Minister Colin Hansen, confirmed the personal income tax cuts announced in the fall of 2008 (See *PAYSOURCE*, No. 160) and contained no new tax increases/decreases affecting payroll.

## Northwest Territories

The 2009 Northwest Territories Budget of February 4, 2009, presented by Finance Minister J. Michael Miltenberger contained no new tax increases/decreases affecting payroll.

## Alberta Introduces Reservists' Leave

Alberta is currently one of only four jurisdictions not to provide job protection for employees who take a leave of absence from their regular employment to serve in the Canadian Forces. The Northwest Territories, Nunavut and the Yukon are the other three jurisdictions.

However, Alberta recently introduced legislation to provide for Reservists leave and the following is a summary of the proposed leave.

### Eligibility, Notice and Length of Leave

An employee who has at least 26 consecutive weeks of employment with his or her employer is entitled to unpaid reservists' leave. The employee must provide the employer with at least four weeks' written notice of the date the leave is to begin. The notice must also give the anticipated date of return, if with respect to an operation, and the actual date of return, if with respect to training. In circumstances of urgent deployment, where it is not possible to provide four weeks' notice, the employee must advise the employer, in writing, of the reservist leave as soon as is reasonable and practicable. Unless there is a valid reason for not doing so, an employee who takes reservist leave must advise the employer, in writing, of any change in the length of the leave as soon as is reasonable and practicable in the circumstances. In addition, documentation from the Canadian Forces and from the employee requiring leave must be provided upon the request of the employer.

The length of the reservists' leave is as long as the operation or training applies to the employee. However, a specific length of leave may be set later by regulation.

## Reinstatement in Employment

If a reservist is on leave for Canadian Forces training and has provided a return to work date in his or her notice, the employee is not required to give any additional written notice of his or her return.

If a reservist, who is on leave for a Canadian Forces operation, is on reservist leave for more than four weeks, the employee must give at least four weeks' written notice of the day he or she intends to resume work. However, if a reservist on leave for an operation is on leave for four weeks or less, he or she must give the employer written notice of the date of his or her return to work as soon as possible before resuming work.

If an employee fails to comply with these resumption of employment provisions, the employer may postpone the employee's return to work up to four weeks after the day the employee has indicated that he or she intended to resume work. During the period of postponement, the employee is deemed to continue to be on reservist leave.

Where an employee resumes work, the employer must reinstate the employee in the position occupied when the reservist leave started, or provide the employee with alternative work of a comparable nature at not less than the earnings and other benefits that had accrued to the employee when the reservist leave started.

If an employee is on reservist leave on the day by which his or her vacation must be used, any unused part of the vacation must be used immediately after the leave expires unless the employer and employee agree to a later date.

An employee who does not wish to resume employment after reservist leave must give the employer at least four weeks' written notice of his or her intention to terminate employment.

## Employer Duties and Prohibitions

An employer can not terminate or lay off an employee who has started reservist leave.

Where an employer suspends or discontinues the business, or part of the business, while the employee is on reservist leave and the employer has not resumed operations when the leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave, reinstate the employee in the position occupied at the time the leave started, at not less than the earnings and other benefits that had accrued to the employee, or provide the employee with alternative work

in accordance with an established seniority system or practice of the employer in force at the time the employee's leave started, with no loss of seniority or other benefits accrued to the employee.

The new Reservists' leave is provided for in Bill 1, the *Employment Standards (Reservist Leave) Amendment Act, 2009* which received first reading February 10, 2009 and second reading February 17, 2009. The progress of the Bill will be noted in future Reports.

## Need To Know

### Manitoba Child and Foreign Worker Protection Legislation in Force April 1

Manitoba's legislation to better protect two vulnerable groups, children and youth in the modelling industry and foreign workers, from unscrupulous recruiters becomes law April 1, 2009. Bill 22, the *Worker Recruitment and Protection Act*, (now S.M. 2008, c.23) repeals the *Employment Services Act*, which currently governs the activities of third-party placement agencies in Manitoba.

With respect to children and youth in the modelling and talent industry, the new Act will decrease their vulnerability by:

- regulating the activities of talent and modelling agencies through licensing;
- ensuring that fees are not linked to the child's opportunity to find work; and
- instituting strict requirements for children being promoted by the industry, including child work permits.

With respect to foreign workers, the new Act will offer increased protections by:

- requiring all employers to register with the province before recruitment of foreign workers begins;
- regulating the activities of recruiters through licensing; and
- prohibiting recruiters from charging workers fees, either directly or indirectly, for recruitment.

The Director of Employment Standards has the authority to refuse or revoke a licence, and to investigate and recover for workers or children money they have paid

to be recruited or represented by an employment agency, a child talent agency, an employer, or a recruiter of foreign workers or child performers.

Bill 22, which was previously summarized in the June issue of PAYSOURCE, No. 156, received third reading and Royal Assent June 12, 2008.

### Saskatchewan Minimum Age Consultations

Saskatchewan's Ministry of Advanced Education, Employment and Labour has launched consultations on the issue of an absolute minimum age of employment in the province, as well as other employment standards designed to protect the well-being of young workers.

The Ministry is asking for input on whether or not there should be an absolute minimum age of employment for all sectors of the economy, and, if so, what that minimum age should be. The Ministry is also asking whether there should be restrictions on minimum age employment. Examples of restrictions would include: parental consent; mandatory work readiness training; maximum hours of work on a school day and/or maximum hours of work during a school week; and supervision requirements.

In Saskatchewan, there is currently no absolute minimum age of employment – i.e., an age below which no young person is permitted to be employed. There is also no legal requirement in that province for young people to obtain parental consent prior to seeking employment. Saskatchewan's Minimum Age Regulations restrict the minimum age in five sectors: hotels, restaurants, educational institutions, hospitals, and nursing homes. As was reported in LABOUR NOTES 1371, dated January 26, 2009, the minimum age in these sectors was reduced to 15 from 16, provided that employed 15 year olds do not work more than 16 hours per week. The change is a pilot project that will be reviewed in May 2009, after the consultations have concluded. The Occupational Health and Safety Regulations also restrict the age at which young persons may be employed in certain hazardous conditions.

The deadline for input on the minimum age is May 1, 2009. To provide feedback, write to:

**Minimum Age of Employment Feedback  
Legislative Services Unit  
400–1870 Albert Street  
Regina, SK S4P 4W1**

**e-mail: [labourlegislationaeel@gov.sk.ca](mailto:labourlegislationaeel@gov.sk.ca)**

## Minimum Wage Changes – New Minimum Wage in Que. and Yukon: Reminders for Man., N.B., N.S. and Ont.

The new minimum wage rates are located in the “Employment Standards” section of PAYSOURCE at ¶5710, ¶5751, ¶5761, ¶5781, ¶5791, ¶5811, ¶5814 and ¶5851.

### Manitoba

Manitoba Regulation 5/2009, which was registered on January 12, 2009, amends the Employment Standards Regulation (Man. Reg. 6/2007) to increase the minimum wage for standard hours of work twice in 2009. The current minimum wage rate in Manitoba is \$8.50 per hour. The amendments to the Employment Standards Regulation increase the minimum wage rate as follows:

- Effective May 1, 2009, the minimum wage will increase by 25 cents to \$8.75 an hour; and
- Effective October 1, 2009, the minimum wage will increase by another 25 cents to \$9 an hour.

### New Brunswick

The current minimum wage rate in New Brunswick is \$7.75 per hour. The minimum wage rate will increase twice in 2009 as follows:

- Effective April 15, 2009, the hourly minimum wage will increase by 25 cents to \$8 per hour; and
- Effective September 1, 2009, the hourly minimum wage will increase by another 25 cents \$8.25 per hour.

The current overtime rate is \$11.38 per hour. The overtime rate will also increase twice in 2009 as follows:

- Effective April 15, 2009, the minimum wage payable for time worked in excess of 44 hours per week will increase to \$12 per hour; and
- Effective September 1, 2009, the minimum wage payable for time worked in excess of 44 hours per week will increase to \$12.38 per hour.

The current rate for employees whose hours of work per week are unverifiable and who are not strictly employed on a commission basis is \$341 per week. This rate will also increase twice in 2009 as follows:

- Effective April 15, 2009, the minimum wage payable per week will increase to \$352; and
- Effective September 1, 2009, the minimum wage payable per week will increase to \$363.

### Nova Scotia

On April 1, 2009, the minimum wage will increase to \$8.60 per hour, up from the current level of \$8.10 per hour.

### Ontario

On March 31, 2009, the minimum wage will increase to \$9.50 per hour, up from the current level of \$8.75 per hour.

### Quebec

On May 1, 2009, the general minimum wage will increase to \$9 per hour, up from the current general minimum wage of \$8.50.

The minimum wage for person who receive gratuities will increase to \$8 per hour, up from the current rate of \$7.75 per hour.

Finally the minimum wage payable to an employee assigned mainly to non-mechanized operations relating to the picking of raspberries, strawberries or apples will increase as follows:

- (1) for an employee assigned to the picking of raspberries: \$0.553 per 250 ml container;
- (2) for an employee assigned to the picking of strawberries: \$0.251 per 551 ml container;
- (3) for an employee assigned to the picking of apples:
  - (a) for dwarf apple trees: \$1.33 per bushel,
  - (b) for semi-dwarf apple trees: \$1.65 per bushel, and
  - (c) for standard apple trees: \$1.89 per bushel.

### Yukon

On April 1, 2009, the minimum wage will increase to \$8.89 per hour, up from the current level of \$8.58.

## Recent Cases and Rulings

### Employee Not Constructively Dismissed or Discriminated Against When Not Returned From Maternity Leave to Promoted Position

● ● ● **Saskatchewan** ● ● ● McLeod believed that she was the acting general manager of Cathedral Freehouse, although her actual position at the time that she left to go on maternity leave was day manager/office manager. While off on maternity leave, the position of general manager came open, so McLeod felt that she was entitled to the position, even though the board of directors had not committed to appointing her to the position. The board considered both McLeod and her replacement, and awarded it to the replacement. The board took into account that McLeod was unavailable due to her maternity leave when making its decision. As a result, although there was no constructive dismissal, the trial judge found that she had been discriminated against on the basis of pregnancy (see 2009 CLLC ¶210-007). The employer appealed.

The appeal was allowed. The trial judge found that McLeod was required to establish that her pregnancy, and her maternity leave, had a bearing on the board's decision not to appoint her to the position of general manager. But, section 27 of *The Labour Standards Act*, which prohibited discrimination against an employee because she is pregnant, disabled by pregnancy, or had applied for maternity leave, did not apply to an employee who was already off on maternity leave. Section 26 obliged the employer, during the maternity leave, to preserve all seniority rights of the employee, and to reinstate the employee in the position occupied by the employee when the leave started. In this case, the position occupied by the employee at the time maternity leave was taken was day manager/office manager, and that position was offered to her when her maternity leave ended. Therefore, the employer met all of its obligations under the Act.

*Cathedral Village Restaurant Ltd. v. McLeod and Dupuis*, (Sask. C.A.), 2009 CLLC ¶210-008.

### Team Leader Worked in Supervisory Not Managerial Role and, Therefore, Entitled to Overtime

● ● ● **Ontario** ● ● ● Munoz began working for Canac in March 1995. He was one of two team leaders who supervised 47 employees working on the assembly line putting together kitchen cabinets. Munoz reported to his supervisor, who then reported to the plant manager. While he

was not a member of the union, those working under his supervision were. The duties of the team leader were similar to a foreman, and while he had many responsibilities, Munoz was the lowest non-union position in the company, and he had no authority to hire, fire, or discipline employees. His job was to receive a plan prepared by others, and to implement it by ensuring that the plan was being followed, the materials were available, and that the workers on the line were following the plan. He was paid an hourly wage, and was entitled to overtime of time-and-a-half after 44 hours of work. Generally, he worked a certain number of overtime hours each month, depending on available work. As a result of a steady decline in Canac's business, a number of team leaders were terminated, including Munoz. He was offered severance of seven months' salary, with benefits. Munoz did not accept the offer, and brought a wrongful dismissal action.

The action was allowed. Munoz worked in a supervisory role, rather than managerial. He had been with the company for 12 years, and he was 52 years old. There was little evidence that there were other comparable positions available, and he had no particular experience, training, or qualifications other than being a foreman in the cabinet-making industry. In addition, Munoz was not fluent in English, which was a detriment to finding another position. Therefore, he was awarded 12 months' reasonable notice. With respect to overtime, where it is part of the employee's regular compensation, and within the reasonable expectation that an employee would receive overtime, then it is recoverable, so Munoz was awarded the equivalent of 12 hours per month of overtime. With respect to mitigation, it was difficult for Munoz to find reasonably comparable employment during the 12-month notice period, and during that period Munoz had no obligation to accept a lower paying job. Munoz was found to have adequately attempted to mitigate his losses.

*Munoz v. Canac Kitchens, a division of Kohler Canada Co.*, (Ont. S.C.J.), 2009 CLLC ¶210-009.

### Taxpayers' Income Not Exempt – Not connected to Indian Reserve

The taxpayers, who were Indians within the meaning of the *Indian Act*, were employed by leasing companies with head offices located on an Indian reserve. These companies, which were owned by O, a status Indian, leased their services to various non-profit native organizations across Canada. The Minister reassessed the taxpayers for various years from 1999 to 2006 on the basis that their employment income was not situated on an Indian reserve, and was therefore not exempt from tax. The taxpayers appealed to the Tax Court of Canada.

The taxpayers' appeals were dismissed. The location of the leasing companies' head offices on the reserve was of limited weight to the extent that these companies carried out their activities off the reserve in the commercial mainstream. Also, the taxpayers' work was largely done off-reserve. Nor could the taxpayers' employment be said to have contributed significantly to life on any particular reserve, and the nature of their employment did not connect their income to any reserve. Although the taxpayers were paid from a bank account on a reserve, this did not connect their salary income to that reserve either as a physical location or as an economic base. There were no special circumstances to tie the taxpayers' work to a specific reserve, and therefore no basis for concluding that the taxation of their employment income would erode their entitlement to property held by them as Indians on a reserve. Therefore, the taxpayers were not entitled to the exemptions claimed.

*Roe et al.*, (Tax Court of Canada), 2009 DTC 1020

### Scholarships Paid by Employer to Taxpayers' Children Not Employment Benefits

The taxpayers' employer partially reimbursed their children's university tuition fees in recognition of the students' academic achievement. The scholarship funds were issued directly to the students by cheque. In reassessing the taxpayers, the Minister included the amounts in their incomes as employment benefits under s. 6(1)(a) of the Act. The taxpayers, B and D, respectively, appealed to the Tax Court of Canada, which issued two decisions setting aside the Minister's assessments on the basis that the taxpayers did not receive or enjoy a benefit within the meaning of the Act (2008 DTC 3012 and 2008 DTC 3027). The Minister appealed the decisions to the Federal Court of Appeal. The Minister contended that the funds had relieved the taxpayers of a binding legal obligation under provincial law legislation to fund their children's education.

The Minister's appeal was dismissed. The Tax Court did not err in rendering its judgments. Also, the Minister raised a new argument on appeal, which the Court could not entertain. The taxpayers were awarded their costs on a solicitor-client scale. The Tax Court decisions were affirmed accordingly.

*Bartley et al.*, (Federal Court of Appeal), 2009 DTC 5019.

### Allocation of Stock Option Benefit

The CRA was asked how it interprets the phrase "principal place of employment" in paragraph six of the Diplomatic Note, Annex B of the Fifth Protocol.

Paragraph six of Annex B to the Fifth Protocol provides a specific rule for the allocation of taxing rights under Articles XV (Income from Employment) and XXIV (Elimination of Double Taxation) of the Canada-U.S. Income Tax Convention where an employee is granted stock options and his principal place of business is in both the United States and Canada.

The CRA stated that, in its view, the phrase "principal place of employment" means the Contracting State in which the employee was physically present while exercising the employment on a particular day. When applying the Fifth Protocol to employee stock option benefits, the CRA will generally apportion the stock option benefit over the period between the grant and the exercise of the option using the following fraction:

$$\frac{\text{Number of days on which an employee is physically present in a Contracting State while exercising the employment in the period}}{\text{Total number of days exercising the employment in the period}}$$

If the employee was present in two countries on one day, rendering services in each country, the CRA would look to the country in which the employee "principally" (i.e., more than 50 percent) rendered services on that day.

Income Tax Rulings Directorate, International and Trusts Division, December 4, 2008, Document No. 2008-0300631C6.

### Deductibility of Legal Fees

The CRA was asked whether an amount paid by a taxpayer to collect or establish a right to payments from a Workers' Compensation Board ("WCB") is deductible in computing net income.

The taxpayer received a settlement from a provincial WCB. The taxpayer incurred \$6,000 in expenses for the cost of an advisor who filed the taxpayer's appeals and represented the taxpayer at the WCB hearing. The settlement payment was included in the taxpayer's income under s. 56(1)(v) of the *Income Tax Act* and was deducted in computing taxable income under s. 110(1)(f)(ii) of the Act.

The CRA stated that legal or accounting fees or other similar types of fees are generally only deductible to the

extent that they are incurred for the purpose of earning income from a business or property and are not outlays of a capital nature (see also Interpretation Bulletin IT-99R5).

The CRA stated that the costs incurred by the taxpayer for establishing a right to an amount under workers' compensation legislation would not be deductible as such costs would be on account of capital (i.e., the creation of the property). Costs incurred by the taxpayer to enforce collection of an existing award would generally be deductible in computing income from such property. However, in practice, this situation would likely be very rare since ordinarily once an award has been finally determined by a WCB the actual payment thereof would not be in dispute. It appears that the taxpayer paid the \$6,000 for the purpose of establishing a right to certain amounts under the WCB legislation and not simply to collect amounts already owing. The \$6,000 would not be deductible.

At first glance, this result seems slightly incongruous with the other provisions dealing with the deductibility of legal fees and expenses in respect of income or benefits arising from the taxpayer's employment. For example, s. 8(1)(b) allows a taxpayer to deduct legal expenses incurred for the purpose of collecting or establishing a right to salary or wages owed to the taxpayer. Paragraph 60(o.1) allows a taxpayer to deduct legal expenses incurred to obtain pension benefits (other than CPP/EI benefits) or a retiring allowance. However, both of these provisions are in respect of legal fees incurred regarding amounts that, if collected, are included in the taxpayer's income. As noted above, the WCB settlement is, ultimately, not taxable, and this may account for the differing treatment.

Income Tax Rulings Directorate, Business and Partnerships Division, December 9, 2008, Document No. 2008-0289751E5.